S.B. CIVIL WRIT PETITION NO.6311/2003

Nathuram vs. Civil Judge (JD), Jaitaran & ors.

Date : 9.12.2004

HON'BLE MR. PRAKASH TATIA, J.

Mr. D.S. Udawat, for the petitioner.

Mr. R.R. Vyas, for the respondent.

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Heard learned counsel for the parties.

The petitioner's grievance is that the trial court fixed the case for deciding the issue no.11 by holding that the issue no.11, which is issue regarding limitation for filing the suit, is a pure question of law. According to learned counsel for petitioner, the question of limitation in the facts of this case is not a pure question of law because the defendant even denied the agreement for reconveyance of the property which contains the term that the defendant shall transfer the land in question to the plaintiff/petitioner when the plaintiff will pay the sale consideration to the defendant. It is submitted that there was no time limit fixed in the agreement for reconveyance and, therefore, limitation starts from the date of plaintiff's offer and defendant's refusal to comply with the conditions of the agreement for reconveyance. When the agreement itself is in dispute, then the Court cannot record any finding that whether the terms of reconveyance of the document on payment by the plaintiff without there being any limitation of payment is there or not.

Learned counsel for the respondents submits that this is a pure question of law because of the reasons that the plaintiff's case is that the limitation will start

only from the date of refusal by the defendant to comply with the term of contract for reconveyance of the property.

It is true that the starting point of limitation, as alleged by the plaintiff, is from the date of petitioner's offer of money to the defendant and refusal by the defendant to comply with the term of the agreement of reconveying the property but this condition is in the agreement which has been denied by the defendant/respondent, therefore, without any finding on the fact that whether the agreement in fact was executed between the parties or not, the question of limitation cannot be decided. Therefore, the court below has committed error of law in holding that the issue no.11 is an issue relating to pure question of law whereas the issue is a mixed question of fact and law and cannot be decided without evidence.

In view of the above, this writ petition is allowed and the order dated 28.7.2003 is set aside.

(PRAKASH TATIA), J.

S.Phophaliya